

FILED
U.S. DISTRICT COURT
2012 SEP 27 PM 3:24
S.D. OF N.Y. W.R.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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Moshe Brander,

Plaintiff,

Civil Action No.: _____

against

Duvera Acceptance One, LLC,

12 CV 7281

**COMPLAINT AND DEMAND
FOR TRIAL BY JURY**

Defendant.

-----X

JMB

Plaintiff Moshe Brander (“Plaintiff” or “Brander”), by and through its attorneys, FREDRICK SCHULMAN & ASSOCIATES, Attorneys at Law, as and for its Complaint against the Defendant Duvera Acceptance One, LLC (“Defendant” or “Duvera”), respectfully sets forth, complains and alleges, upon information and belief, the following:

INTRODUCTION/PRELIMINARY STATEMENT

1. Plaintiff brings this action for damages and declaratory and injunctive relief arising from the Defendant’s violation(s) of Sec. 1692 et. seq. of Title 15 of the United States Code, commonly referred to as the Fair Debt Collection Practices Act (“FDCPA”).

PARTIES

2. Plaintiff is a resident of the State of NY, County of Rockland, residing at 4 Sunrise Drive, Monsey, NY 10952.

3. Defendant is a collection firm with a principal place of business at 1910 Palomar Point WY, Suite 101, Carlsbad, CA 92008, and, upon information and belief, is authorized to do business in the State of NY.
4. Duvera is a “debt collector” as the phrase is defined and used in the FDCPA.

JURISDICTION AND VENUE

5. The Court has jurisdiction over this matter pursuant to 28 U.S.C. Sec. 1331, as well as 15 U.S.C. Sec. 1692 et. seq. and 28 U.S.C. Sec. 2201. If applicable, the Court also has pendent jurisdiction over the State law claims in this action pursuant to 28 U.S.C. Sec. 1337(a).
6. Venue is proper in this judicial district pursuant to 28 U.S.C. Sec. 1333(b)(2).

FACTUAL ALLEGATIONS

7. Plaintiff repeats, reiterates and incorporates the allegations contained in paragraphs numbered “1” through “6” herein with the same force and effect as if the same were set forth at length herein.
8. Upon information and belief, on a date better known to the Defendant, the Defendant began collection activities on an alleged consumer debt from the Plaintiff (“Alleged Debt”).
9. In or about July 2012, the Defendant placed several telephone calls to the Plaintiff, and left messages for the Plaintiff on the Plaintiff’s shared answering machine (See attached hereto as “Exhibit A – transcript”).
10. Said messages contained personal and confidential information.

11. Said messages were attempts to collect a debt, and they were left on an answering machine which was played and heard by one or more third parties who each had the right and opportunity to play same.

12. Said messages were heard, amongst others, by the Plaintiff's brother, David Brander.

13. The actions of the Defendant led to embarrassment, harassment, and disclosure of confidential information to a third party.

14. Said actions by the Defendant violated 15 U.S.C. Sec. 1692b(2) and 15 U.S.C. Sec. 1692c(b) which prohibit communicating with anyone except consumer and communicating to a third party, stating that a consumer owes a debt.

15. As a result of the Defendant's deceptive, misleading and/or unfair debt collection practices, the Plaintiff has been damaged.

FIRST CAUSE OF ACTION

(Violations of the FDCPA)

16. Plaintiff repeats, reiterates and incorporates the allegations contained in paragraphs numbered "1" through "15" herein with the same force and effect as if the same were set forth at length herein.

17. Defendant's debt collection efforts attempted and/or directed towards the Plaintiff violate various provisions of the FDCPA, including but not limited to 15 U.S.C. Sec. 1692b(2) and 15 U.S.C. Sec. 1692c(b).

18. As a result of Defendant's violations of the FDCPA, Plaintiff has been damaged and is entitled to damages in accordance with the FDCPA.

DEMAND FOR TRIAL BY JURY

19. Plaintiff demands and hereby respectfully requests a trial by jury for all claims and issues in this complaint to which the Plaintiff is or may be entitled to a jury trial.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff Moshe Brander demands judgment against the Defendant Duvera Acceptance One, LLC, as follows:

- A. For actual damages provided and pursuant to 15 USC Sec. 1692k(a)(1);
- B. For statutory damages provided and pursuant to 15 USC Sec. 1692k(2)(A);
- C. For attorneys' fees and costs provided and pursuant to 15 USC Sec. 1692k(a)(3);
- D. For a declaration that the Defendants' practices violated the FDCPA; and,
- E. For any such other and further relief, as well as further costs, expenses and disbursements of this action, as this Court may deem just and proper.

Dated: New York, New York
September 20, 2012

Respectfully submitted,

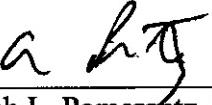
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Exhibit A - transcript

This message is for Moshe Brander. If you are not Moshe Brander please hang up or disconnect. If you are Moshe Brander please continue to listen to this message. There will now be a three second pause in this message. [Pause] By continuing to listen to this message you acknowledge that you are Moshe Brander. You should not listen to this message Moshe so that other people can hear as it contains personal and private information. There will now be a three second pause in this message to allow you to listen to this message in private. [Pause] This is Palomar Associates. This communication is from a debt collector. This is an attempt to collect a debt and any information obtained will be used for purpose. Please contact us back about an important business matter at 866-711-4700 again the number is 866-711-4700 thank you.

This message is for Moshe Brander. If you are not Moshe Brander please hang up or disconnect. If you are Moshe Brander please continue to listen to this message. There will now be a three second pause in this message. [Pause] By continuing to listen to this message you acknowledge that you are Moshe Brander. You should not listen to this message Moshe so that other people can hear as it contains personal and private information. There will now be a three second pause in this message to allow you to listen to this message in private. [Pause] This is Palomar Associates. This communication is from a debt collector. This is an attempt to collect a debt and any information obtained will be used for purpose. Please contact us back about an important business matter at 866-711-4700 again the number is 866-711-4700 thank you.

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